



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 26, 2003

Mr. David K. Walker  
County Attorney  
Montgomery County  
210 West Davis, Suite 400  
Conroe, Texas 77301

OR2003-2046

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178438.

Montgomery County (the "county") received a request for the county-paid cell phone and pager numbers for county Justices of the Peace, Constables, Sheriff's Department, Commissioners, and District and County Judges. You claim that a portion of the requested information is not subject to the Public Information Act (the "Act") pursuant to section 552.003(1)(B) of the Government Code. You further claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and the exceptions you claim, and have reviewed the submitted representative sample of information.<sup>1</sup>

You contend that the cell phone and pager numbers for the District and County Judges and Justices of the Peace are "records of the judiciary" that are excepted from required disclosure pursuant to section 552.003 of the Government Code. In support of your argument, you refer

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to the Texas Supreme Court *per curiam* opinion,<sup>2</sup> which determined that Supreme Court telephone billing records are judicial records not subject to access under the Act. We note that the telephone billing records at issue were collected and were being maintained for the court by the General Services Commission ("GSC"), in GSC's capacity as an agent of the court. However, in this situation, the telephone and pager records at issue are records of the county that are being maintained for the county, rather than records of the judiciary. As the county is a governmental body for purposes of the Act, and county records are generally subject to the Act, the cellular phone and pager numbers of the Judges and Justices of the Peace are subject to the Act. *See* Open Records Decision Nos. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), administrative records reflecting day-to-day management of community supervision and corrections department are subject to Act), 204 at 3 (1978) (information held by county judge is subject to Act except to extent it pertains to cases and proceedings before county court). As you claim no exceptions to disclosure of this information, these cellular phone and pager numbers must be released to the requestor.

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.--Austin 2002, no pet.). To claim this aspect of section 552.108, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). You argue that the cellular telephone and pager numbers assigned to the county commissioners, the Constables,

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<sup>2</sup> *Order and Opinion Denying Request Under Open Records Act*, No. 97-9141, 1997 WL 583726 (Tex. August 21, 1997).

and members of the Sheriff's Department are excepted from disclosure pursuant to section 552.108(b)(1). This office has previously determined that the cellular telephone numbers assigned to county officials and employees with specific law enforcement responsibilities are excepted from required public disclosure pursuant to section 552.108. *See* Open Records Decision No. 506 (1988) (applying predecessor statute). After considering your arguments, we conclude that you have demonstrated that the cellular telephone and pager numbers assigned to the county commissioners, the Constables, and members of the Sheriff's Department may be withheld from the requestor pursuant to section 552.108(b)(1).

In summary, the county may withhold the county-paid cellular and pager numbers of the county commissioners, the Constables, and members of the Sheriff's Department from public disclosure based on section 552.108. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

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of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 178438

Enc. Submitted documents

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(w/o enclosures)